ART. VIII.—*An Anniversary Discourse delivered before the Historical Society, on Saturday, December* 6, 1823, *showing the Origin, Progress, Antiquities, Curiosities, and Nature of the Common Law.* By WILLIAM SAMPSON, Esq. 8vo. pp. 68. E. Bliss and E. White. New York. 1824.

IN this Discourse Mr Sampson has with ingenuity and learning accomplished the plan, which is indicated with so much precision in the titlepage. He sets out resolutely to ascend to the fountain heads of the common law, and explore the regions whence this immense stream derived its original impulse. He takes up the thread of history, and pursues it with diligence and fidelity through the dark places of Druidical, Saxon, and Norman antiquity, and collects in his range such facts as the dim light of those distant ages enabled him to discover. The whole result is not the most flattering to those, who would laud the wisdom of our ancestors, or look back with complacency on their principles of government, as the germs of our present political and civil institutions. And more especially will Mr Sampson's investigations discourage any one, who hopes to find in the twilight of our early history that period, to which Blackstone ascribes the 'pristine vigor' of the common law. The author proves very clearly that it never possessed any such vigor, that it was a feeble, tottering, unstable thing, till the reason, wisdom, humanity, and experience of more modern times gave it the character by which it has been marked in civilised and settled governments. To talk of the *ancient* common law is to give a false name to the bloody codes of barbarians, who were ferocious in their enterprise, savage in their manners, and cruel in the exercise of the power, which strength or crime might put into their hands.

It is the fanciful theory of Sir Edward Coke, borrowed from Geoffrey of Monmouth, that the first laws of the Britons were selected from the laws of the Trojans, and introduced into the island by king Brutus, the great grandson of Æneas. Geoffrey tells us how this Brutus, after having married the daughter of king Pandrossus in Greece, found his way to Britannia, where he conquered the giants that inhabited there,

killed their king Gog Magog, and established himself as sovereign of the country. 'That the laws of the ancient Britons,' says Lord Coke, 'their contracts and other instruments, and the records and other judicial proceedings of their judges, were wrought and sentenced in the Greek tongue, it is plain and evident by proofs luculent and uncontrollable.' These proofs, however, when examined, turn out to be little else than a passage in Cæsar, supposed by the best critics to be interpolated, in which it is hinted that the Druids used the Greek character. On this apocryphal evidence it is made out, that the common law came from Troy, and was first propounded to the inhabitants of Britannia in Greek. To this tradition about the Greek character, admitting it to be a fact, Mr Sampson justly replies, that 'the Druids using Greek letters no more proved that the ancient Britons pleaded in Greek, than our almanacs being printed in Roman characters prove that their compilers speak Latin.' With this remark the author wisely dismisses the subject of the Trojan origin of the common law.

He pursues the inquiry, however, through all the periods of early British history, and describes the manners, institutions, and prevailing characteristics of the people in the various political changes through which they passed. He speaks of the Druids, their superstitions, barbarous religious rights, and absurd customs. He next comes to what he calls the Roman era, and shows that no records remain of the modes of administering laws at that time, and that these can be ascertained only from scattered allusions in history. Next comes the Saxon period, then the Scandinavian, and last of all the Norman. Each of these is touched upon with as much minuteness as the author's limits would admit, and the materials which he draws from history, in the course of his investigations, are made to bear with force and directness on his subject. Some of the conclusions to which he has arrived shall be expressed in his own words.

'It was my intention here to have pointed out some of the most curious and interesting subjects, connected with the history of our law, but time will not permit. They will present themselves readily to the historian, who shall devote his labors to the useful and honorable task of exploring, with a view to future improvement, the true foundations of our law. And let none be deterred by the

supposed dryness of the subject. The historic muse is not austere, except when dulness woos her; invoked by genius, she gives to the coldest subjects warmth and animation. And as the geographical historian is not content to determine the depth of the valley, or the height of the mountain, but enriches his works with moral instruction, by the history of the human beings, who lived, and roved, and worshiped and fought, and flourished and fell, by the mountain's side, upon the verdant plain, by the river's bank, or the wide ocean wave; so the historian of our law, derived as it is from such an ancient and a distant source, will find his subject abounding in those changeful events, metamorphoses, and transitions which impart to real and most important history, all the high charms of poetry and fiction. Whilst fancy roams at large through time and space, and "distance lends enchantment to the view," reason will knit the chain that binds effect with cause, and judgment will approve the generous design.

'This discourse is but a short prelude, to challenge into the noblest field of exertion the talent and genius of our country, much of which is now lost in barren erudition. If the hundredth part of that painful industry and acknowledged talent, which is wasted upon vain and ever baffled efforts to reconcile the irregularities, explain the anomalies, sustain the paradoxes, and solve the riddles of our entangled jurisprudence, was bestowed upon a science capable of improvement or advancement, what glorious fruits would it not, e'er now, have brought forth, instead of that sickly and exotic growth, that has no sap nor freshness; upon whose withering branches some faint pale blossoms may appear, but rich fruit cannot ripen. We should have had laws suited to our condition and high destinies; and our lawyers would have been the ornaments of our country. No longer forced into the degrading paths of Norman subtleties, nor to copy from models of Saxon barbarity, but taught to resolve every argument into principles of natural reason, universal justice, and present convenience, truth would have been the constant object of their search; chicane and pettifogging would have found no dark crevices to lurk in; bad faith would have been banished from the temple of Justice; good sense would not be shocked with the failures of right, upon exceptions of idle and unmeaning form; and Justice would not be seen for ever travelling upon bypaths, such as necessity enforces by the sides of a broken road.' p. 51—53.

The author indulges in pleasing anticipations of the benefits, which our own country is likely to derive from the common law, when it shall be divested of its Gothic costume, and be made to wear an aspect suited to the genius and progress of a free government.

'It is the meagreness and insufficiency of this ancient stock, that has obliged judges to legislate *pro re nata*, upon every new point. It is the complication of these stinted usages with the perverse intricacies of the Norman jurisprudence, that has made decisions less wise than if their authors had been more free to follow the dictates of their own good sense, or less restrained by the antisocial spirit of the common law, from resorting to universal principles, and to codes of approved and written reason. The colonial laws, and the constitution and statutes of the state, have successively pruned the exorbitancies and strange peculiarities of the English jurisprudence; and it is therefore, that the decisions of our judges, due regard had to their personal merits, stand so far above those which we import. It is for that reason also, that we should import no more; for with every deference due to the learning, wisdom, and integrity of English judges, they are not fit persons to legislate for us. If we are indebted to them for much good learning, it is more becoming to pay them back with interest, than run deeper in their debt. Dependence can never cease if one nation is always to teach, and the other always to learn. Our condition is essentially different from theirs. They are appointed by a king, and he is the fountain of their justice and its administration. Some of them are stationed at Westminster, and some are supposed to follow this moveable fountain wherever it shall be. Must we too follow? Must we tread always in their steps, go where they go, be what they are, do what they do, and say what they say? Too much of this sympathy may endanger our very being. If we can only be wise when they are wise, we must also be foolish if they are foolish, doat when they doat, and die when they die.' p. 57, 58.

After showing how inconsistent it is in a land of freedom to adopt the old usages and laws of despotic countries, and to chain the spirit of justice and liberty with the fetters forged in the darkest days of oppression and wrong, the author proceeds.

'It may be asked, Why this censure upon our ancestors and upon their usages, and whether there is any code for which we would exchange our law. I answer; as to our ancestors I hold them all in equal honor, and treat them better than they have done each other. I would not ruffle a feather in the cap of any of them; but it is no disparagement to say, that they were barbarous in times of universal darkness. And as to our laws, it is one thing to change, and another to reform them with a tender, patient, kindly, and experienced hand; and God forbid they should be touched or meddled with, by any other than the wise and honest.

'Our law is justly dear to us—and why? because it is the law of a free people, and has freedom for its end, and under it we live

both free and happy. When we go forth, it walks silent and unobtrusive by our side, covering us with its invisible shield from violence and wrong. Beneath our own roof, or by our own fireside, it makes our home our castle. All ages, sexes, and conditions, share its protecting influence. It shadows with its wing the infant's cradle, and with its arm upholds the tottering steps of age. Do the smiles of the babe give gladness to the mother's heart, her joy is perfect in the consciousness that no tyrant's power dares snatch it from her arms; that when she consigns it to repose, its innocent slumbers are guarded by a nation's strength, and that it sleeps more free from danger than kings amidst their armed myrmidons. And when life's close draws near, we feel the cheering certitude, that those we love and leave shall possess the goods that we possessed, and enjoy the same security in which we lived and died. But that we are indebted for this to Saxon, Scandinavian, Gaul, Greek, or Trojan, is what unsophisticated reason will not endure. We owe it to the growth of knowledge, and to the struggles of virtuous patriots, many of whom have bled and died for it; we owe it to fortunate occasion and favoring providence. But even this part of our law which thus secures our rights and liberties, is not untainted with pedantry, nor free from all absurdity. A sister state has already set on foot the experiment of a penal code, and committed its execution to the hands of one of its most capable citizens. Let us hail the happy augury and prepare for a still nobler effort, which imperious necessity will force upon us, and which cannot and ought not to be long delayed.

'If the experiment had never before been made of a judicial code, substituted in the place of antiquated legends, usages, and customs, we might fear to engage in an untried and hazardous undertaking. If no attempt had ever yet been made, to reduce to a body of written reason, the scattered fragments of a nation's laws or usages, or if when such attempts were made, disorder and mischief had constantly ensued, we might take warning from such examples. If no wise jurists had ever recommended the digesting and new ordering of the law, there might be temerity in the proposal; but Hale and Bacon have not only approved, but offered their views and plans. And are not our own written statutes periodically revised; why not that part of our laws that rests upon less solid evidence? It has been the first glory of the greatest sovereigns and the best policy of the wisest people. The most celebrated lawgivers have travelled into all regions where early civilisation had left its luminous traces, to gather the chosen flowers and fruits of every clime. If the fathers of our revolution at the peril of much more than life, of all the vengeance that offended power can visit on the unsuccessful patriot, dared to uproot the three great pillars of the Common Law, the monarchy, the hierarchy, and privileged orders, shall we

stand in superstitious awe of unlaid spectres, shall we still be amused by nursery tales, and tremble at the thoughts of innovations upon institutions, which their admirers themselves assimilated to the practices of the Gentoos, the Mexicans, and the children of the Sun?' p. 59—62.

From these specimens, selected from Mr Sampson's discourse, our readers will be able to form an opinion of his habits of thinking and style of composition; and few, probably, will consider it matter of regret, if it should be discernible from these and other parts of the performance, that they partake of the character of his native country, and of the enthusiasm, which a no distant epoch in her history has called into full action. If we have been rightly informed, the author of this discourse was neither an indifferent, nor disregarded spectator of the events to which we allude. While America is free, she will never cease to remember and lament the wrongs of Ireland, nor to respect and cherish those of her sons, who have suffered in the noble though ineffectual struggle to break the rod of oppression, and throw off the burden of servitude. It is not impossible that events of the writer's life, operating on a warm and generous character, may have biassed his opinions, or at least impressed them on his mind more deeply, and wrought them into principles of increased strength and energy. Be this as it may, we estimate highly his learning and genius, we approve for the most part the views he has taken of an important subject, and admire the generous zeal with which he has thrown himself into the front ranks of those, who contend for the cause of truth and reason, with little chance of present honor or success.

Availing ourselves of the information derived from Mr Sampson's discourse, we here take occasion to offer a few remarks of our own, both in regard to the causes, which keep back the progress of the law more than other sciences, and to the means by which this progress may be hastened.

Some of the circumstances, which have retarded the improvement of the law among us, seem to be of a more accidental nature than others; and to encourage us with the hope, that they will in some considerable degree be removed by the progress of time and increase of wisdom. One of these circumstances is, that in this country, and in that from which we derive our legal institutions, the law is *artificial and*

technical to an extent very much beyond what is required by the reason or nature of the case. This remark, so far as it includes the principles of the common law, is applicable to England and to all the states of this Union, which have adopted the common law, but so far as it relates to the *practice* of the law so called, or to its modes and forms of proceeding, it is applicable only to England, and to such of the United States, probably a small proportion of the whole, as have adopted in mass the English practice of the common law.

This extreme artificialness, and technicality of the English common law, both as to its principles and its practice, distinguishes that system very broadly from every other. This distinction is remotely analogous to that which exists between the syllogistic mode of reasoning, and the ordinary style of argument in which a plain man would press his conclusions. It would be an interesting and instructive inquiry, to trace this peculiarity through some of the leading features of the system, such as the distinction between sealed instruments and those not under seal, the refined doctrines relating to real estates, the forms of actions, the niceties of special pleading, and the rules of practice as they exist in England. A strict research and close analysis directed to this subject would render it very evident, that these peculiarities are not usually, nor perhaps ever, the result of prospective wisdom. Their origin will be found in the history of the times, and in the particular states of society in which our English ancestors were placed. Since those periods the condition of the people has undergone a change almost radical, but the laws have not experienced a correspondent revolution. Lands in this country and in England are nearly as much the subject of traffic, as the public stocks, and yet the *theory* of the law of real estate is almost as feudal as it was in those times, when resort was had for national defence, not to the monied sources of the country, but to the lands which were held on the condition of performing military service. Society has grown and spread in every direction; wealth has increased to an immense degree, and its nature changed by the disproportionate increase of personal property; occupations and interests are in a thousand ways extended and diversified; but all this has been done silently and gradually; there has been no revolutionary period, no crisis, no epoch when the

community, finding itself thrown into new circumstances, was obliged to cast about for new rules or principles to guide it in the emergency.

The lawyers and judges of the common law were not in advance of the age; they did not perceive the alteration, that had begun and was going on in the structure of society; on the contrary, they strove to apply old rules, with which only they were acquainted, to new relations and new things. In addition to this, and cooperating with it, was that love of quaintness, refined reasoning, and fanciful analogy, which characterises the early stages of civilisation. It was necessarily the combined effects of these circumstances, and of others not here enumerated, to give to the law in the progress of time an air of mystery, inasmuch as its reasons and principles were not to be found in the existing state of things, and its practice was unintelligible, having reference to institutions which had passed away. It has been asserted, that all knowledge is so intimately connected, that from any one truth almost every other might be deduced. This is probably extravagant, but it certainly is true, that the law, which regulates the rights of property, and prescribes rules of action to the whole mass of the people, bears a very strong affinity to most other species of knowledge, and especially to general intelligence; and yet the common law has been nearly excluded from the beneficial influence of those causes, which have elevated and improved the intellectual condition of the community.*

We now approach with due caution the separate consideration of an important part of this subject, and that is the *veneration and obedience paid to authority and precedent*, which prevail in our system of law in a much greater degree, than in most other departments of knowledge, or spheres of action. The principle on which this veneration is founded is universal in our nature, and of most salutary tendency. Without it all ancient wisdom would be useless, and uniformity

* In the time of Cicero a few months' study was thought sufficient to render a young man, otherwise well instructed, a sufficiently accomplished lawyer. That the magnitude of this task is so much greater among us, is no doubt in the main to be ascribed to the different state of society, and the more perfect protection of rights; but one cause of the difference is certainly to be found in the extreme technicality of the law, to which we have above alluded.

would be lost in wild confusion. The inquiry of the enlightened jurist and legislator should be, how far any interference with it in relation to this subject is desirable or safe; and how far this principle should be permitted to restrain the operation of others, which are perhaps equally essential to the happiness and glory of the country?

The foundation of the English common law is *authority*, that is, the *dicta*, or *sayings*, and the decisions of the Judges, handed down from the earliest time to the present, each successive decision being, or being supposed to be, founded on some preceding adjudication, or at least but a new application of a principle already established. This is the theory of the common law, and the practical deviations from it have been rare and slight. The maxim is *stare decisis;* and no argument *ab inconvenienti*, that is, showing the mischievous nature of a principle, is permitted to be urged against a positive decision. Whatever has once been clearly settled, by a competent tribunal, is not again to be drawn into question before a judicial forum, and, if wrong, it can only be corrected by the omnipotence of legislative authority.

There are specious and weighty reasons for this principle. We are told, and truly, that, with regard to a great number of legal questions, they are not subjects of ethics, that there is no right or wrong in the case, but what is made by the law; that it is more important that the rule should be known than that it should be right, for otherwise there would be no guide to conduct, or security in property; that there is no safeguard against judicial tyranny and corruption but in the immutability of the law; and, in short, that innovations are dangerous, and it is most safe and wise to suffer things to remain, as they have been settled by the wisdom and toil of the ancient sages of the law. A sufficient degree of weight, at least, has been practically allowed to these and similar considerations; and we shall hastily state some of the reasons, which have inclined us to this opinion.

The first remark which arises, is, that this is not the course in which analogy would lead us. Not only in the pure sciences, but in metaphysics, politics, political economy, medicine, and literature, the time has passed, or is rapidly passing, when the question was not what is true, or just, or excellent, but what has been declared by the wise, the ancient, and the

men in authority. In every other branch of human inquiry and intellectual effort, it has been found, and is now for the most part admitted, that the veneration for authority has been one of the principal barriers to human improvement. Rash innovation has indeed been productive of enormous evil; but in its own nature it is conspicuous, and excites attention, and having every habit and tendency of society to oppose, and nothing to favor it but its own merit, it is quickly discarded if found pernicious. This is so true, that many important discoveries and improvements have often sunk under the shock of opposing prejudices, and have again been revived with the happiest effect in after times, and under circumstances more propitious. Disregarded millions have pined and perished under the chains of habit, prejudice, and authority, while there have been comparatively few victims of enticing novelty; but as the fate of these latter has been more marked, it has alone been pointed out as the beacon to alarm. New opinions are often visionary, and introduce confusion, but what have these done compared with the tyranny of the Aristotelian system? The French revolution, the most tremendous innovation which ever convulsed the established order of things, was indeed a moral Vesuvius, but already its fires are extinct, and its desolating lava has mingled with and fertilised the soil. What is that compared with the unvarying despotism, and the changeless casts of the East, where every effort of the intellect, and every impulse of the heart, is repressed not less by the tyranny of custom, and ancient and venerated usage, than by the sword of power.

This excessive veneration for authority binds one age in the chains of another; it tends to preclude improvement. The very idea of improvement is to discover and put in use something better than what has hitherto been known, whereas, the principle upon which the law is administered is to repress all innovation, and to ascertain and declare precisely, what our ancestors would have declared in a similar case. This is reversing the proper and natural order of things. The world, as it grows older, in the ordinary course grows wiser, and ought to put away as childish, some things which are fast passing from the ancient and venerable, to the absurd and ridiculous. Society has grown and spread in every direction, and the garments of her youth would but serve as ligatures to repress and distort the growth of her riper years.

It is not a decisive objection to the English common law, that it was the creation of accident, and not of prospective contrivance. On the contrary, a body of laws expanding with the increase of a country, yielding to new exigences as they arise, and adapting itself to them, refining and improving as society advances, would, in all probability, form a system infinitely better adapted to use, than any that could be struck out at a heat by the most enlightened jurist, or set of jurists. An eminent instance of this is the trial by jury, the boast of the common law, and which nothing should ever induce a free country to relinquish. The trial by jury is the result of accident, by which we mean only to say, that it was not originally instituted with a design to answer its present uses; and if the only object were to provide a tribunal for the intelligent investigation and correct decision of civil controversies, it would not seem a peculiarly felicitous contrivance to select by lot twelve men from the mass of the community, not to form a permanent body, so that they might profit by experience, but merely to decide a few causes, and then to return immediately to their ordinary avocations. But the evils, which might be apprehended from a tribunal so crude and evanescent, are much modified by methods introduced by time and experience, and are infinitely outweighed by its solid benefits, by the protection of the subject against power, by the check interposed to judicial encroachment, and, above all, by the elevation conferred on the great body of the people, by making them conversant with the administration of justice, and partakers in it. We should be among the last to undervalue institutions which, whatever might be their origin, and whatever theoretical objections may be urged against them, have been thus happily applied, and have been matured and perfected by time. But in regard to the English common law, the misfortune is, that time and the advancement of society have not uniformly been permitted to produce the beneficent effect, which they would have done, but for the intervention of artificial barriers.

This remark may be illustrated by an instance, which we are happy to admit is probably more striking, than any other that could be produced. In ancient and barbarous ages some controversies were settled by judicial combat, or personal contests between the parties. The superstition, which then

sanctioned such a procedure, and rendered it preferable to anarchy, has long since passed away, but the law was not altered until very recently. The following language was held by Lord Ellenborough, in the case of Ashford *v.* Thornton, in the year 1818, reported 1 Barnewall & Alderson, 460. 'The general law of the land is in favor of wager of battel, and it is our duty to pronounce *the law as it is*, and not as we may wish it to be. Whatever prejudices, therefore, may justly exist against *this mode of trial*, still, as it is the law of the land, the Court must pronounce judgment for it.' In that case, if the heart of the plaintiff had not failed him, the Judges must not only have awarded the trial, but, if we recollect rightly, must themselves have superintended it in their robes of office.

It would be unfair to press an objection of this description against an ancient system, if the rigid principle of adherence to precedent only manifested itself in a few rare and extravagant instances, of the nature of that which we have just cited. But the truth is not so. Large portions of the law receive their character from this principle, and it is to a great extent infused into the whole mass. The English common law relating to real estate is chiefly founded on the feudal tenures, by which lands were first allotted to the military men according to their rank or services, and were by the polity of the times subsequently regarded as the foundation of the national defence. The whole system is exceedingly confused, complicated, and uncertain. The practice under it in England, and in those states of this Union, which have adopted the English practice, is still worse. Such was the inextricable involution of the subject, that it was found or supposed impossible to provide a clue to the labyrinth. In this predicament the lawyers resorted to a fiction, an expedient not unfrequent in every artificial system. They contrived the action of ejectment, which Blackstone terms a useful and 'elegant' fiction. Its elegance is matter of taste; its utility consists in furnishing some escape from forms and principles, which were in ruder ages adapted to the state of society, but which political changes had rendered unable longer to be endured.

It is a truth, which our unskilful readers will hardly credit, that in England and in many of the United States, there is not *in common use* any mode of ascertaining by a definitive judicial decision, which of two claimants has the best title to a con-

tested estate. The usual resort is to the action of *ejectment*. A and B contest the right to a house and five acres of land. One would think that this matter might in ordinary cases be decided without any great difficulty, in a suit brought directly by A claiming the land against B in possession of it; and that this simple conception of the matter is not a visionary theory, but quite practicable, is abundantly proved by the actual experience of several states of this Union, which, in the ignorance of early times happily *forgot* the difficulties and impediments, which the action of ejectment was contrived to obviate. But in England the feudal theory is to be preserved, or, if this be not entirely practicable, appearances are to be kept up, which will disguise the departure from it. The title itself cannot therefore be tried, but the claimant makes, or rather is supposed to make, (for all is a fiction,) a lease of the premises for a term of years to John Goodright. Goodright then sues Thrustout for this injury, declaring that he has been violently dispossessed of one hundred acres of arable land, one hundred acres of wood land, one hundred acres of land covered with water, &c. Thrustout being, like Goodright, a nonentity, the plaintiff's attorney in his name writes a letter to the defendant informing him of the existence of the suit, of which he might otherwise be ignorant, and advising him in a very friendly manner, that unless he appears and defends it, judgment will go against him by default. The defendant then comes in, and is forced by the court to admit the lease made to Goodright, and that he has been turned out of possession of the premises, but says, nevertheless, that *he* is not guilty of the trespasses alleged against Thrustout. The cause is then tried. If the jury considers the plaintiff entitled to the whole, *or any portion* of the contested premises, they find the defendant guilty. The plaintiff then takes out a writ of possession, and takes possession of the whole five acres, or so much thereof as he may think proper. An indirect and expensive proceeding is instituted against the losing party to compel him to pay the costs, and as soon as these are paid, nothing whatever appearing by the record to have been settled in relation to the title to the land, he can, in his turn, institute a new suit against his antagonist in which Messrs Goodright and Thrustout will change sides, and thus the controversy may be renewed and carried on *ad infinitum*,

or until restrained by the tardy interference of a court of Equity.*

There is a period in the history of every country advancing from barbarism to civilisation, when it is peculiarly unfit that the ideas then prevalent should be indelibly stamped upon the fabric of society. It is that point of moral and intellectual progress, when what is easy, free, and simple does not suit the taste; when cunning is preferred to wisdom; knowledge degenerates to artificial logic; and energy and nature give place to conceit, quaintness, and affectation. Such were the times when the rules of logic debarred the exercise of reason; this was the era of the school divinity; and, if the very truth were told, it had not wholly passed away when our present legal precedents were set. It would require no great aptness in the discovery of similitudes to find the likeness between Coke and Cowley.

The idea we would communicate, so far as it relates to our present subject, may be best illustrated by an example. The laws governing real estate are mostly the contrivance of an astute age. Nothing is, in its own nature, more simple than the ownership of real property, which is permanent in its nature, and always subject to the apprehension of the senses, and yet subtilties, quibbles, refinements, and false analogies, have been introduced into it to such an extent, that it can excite little admiration except in the eyes of a thorough bred common lawyer. Compare this with the law of marine insurance. Almost its whole growth and development have occurred since Mansfield ascended the English Bench, and it is needless to say, that it excels the law relative to real estate in wisdom, as much as it falls short of it in cunning and ingenuity.

The extremely artificial nature of that part of the common law, which treats of real property, has produced its necessary effect, immense litigation. Of this every one must be aware, who is conversant with the English books of reports. To

* The theory of the action of ejectment is so scrupulously preserved, that in a recent case it was solemnly decided by the court of King's Bench in England, that a release of the action by the lessor of the plaintiff the real party in interest could not be pleaded; no one could release the action *but the plaintiff himself.* The defendant therefore not being able to produce the release of John Doe, (who answers to Goodright in the case above supposed,) was deprived of his defence. *Doe v. Brewer,* 4 *Maule and Selwyn,* 300.

show that we are not striving to exercise a wanton ingenuity, by urging objections against established institutions, which, however true in theory, have no practical influence, let it be remembered, that in France, where the civil law is adopted, lawsuits relating to the title of real estate are very infrequent, and scarcely bear any assignable proportion to those, which are litigated in the English courts. This fact affords a fruitful theme for reflection and inference.

But the stability of a fixed system, the alleged certainty of the law, is maintained to be a sufficient counterpoise to every objection, which can be raised by the caviller. The certainty of the law is a phrase, which, it is feared, will be scarcely intelligible to any but the initiated. We may talk of the law as an allegorical personage in terms to suit our own fancies, but the simple truth is, that the law, or to speak with greater precision, the judicial opinions of those, whose province it is to pronounce its decrees, is notoriously, and even proverbially *uncertain*. Many reasons may be assigned why it must always remain so. The question which now concerns us, is, whether an extreme deference to precedent and authority does not rather increase than diminish this uncertainty? The main object of the certainty of the law is, that the citizen may have before him a plain rule as a guide to his conduct, and protection to his property. As he cannot be an adept in legal lore, he necessarily must and will judge by the propriety, reason, and nature of the case, and this he will do, although an unbroken series of decisions, from the year books to the last term of the Supreme Court, have established a doctrine diametrically opposite to that, which his natural understanding has suggested to him as the true one. Of the decisions he never heard; the common sense of the case appears to him plain. Or it may be, that the law recognises the propriety of the object he has in view, but has prescribed as necessary to its successful accomplishment certain forms or modes of expression, which would never suggest themselves to his unaided intellect, or, if they did, which he would understand in a sense far different from that affixed to them by the law, and which, therefore, he will be sure to disregard. Let this be illustrated by one or two examples.

The law once decided, in conformity with the etymology of language, that a covenant to *repair* a building, or tenement,

was a covenant to *rebuild*, and enforced the performance of the covenant in case of accidental destruction by fire or otherwise. The meaning of the term, in ordinary language, has since changed, but there has been no change in the construction of law, and the consequence is, that persons have gone on, year after year, for hundreds of years, and will doubtless persevere for hundreds of years to come, to subject themselves to a very serious liability of which they have no previous conception.

Again, a man devises his real estate to his brother John, but, if he *dies without issue*, then to his brother James. This is a natural disposition of property, intended to correspond to a probable event. But the law once said, and therefore will always say, that 'dying without issue' does not mean, what every man but a lawyer understands it to mean, dying childless, or without issue at the time of his death, but that it has relation to '*an indefinite failure of issue*,' that is, to some remote future time, when, in the lapse of ages, all the descendants of John may be dead, and his race extinct. The law then says, and very justly, if the premises were just, that this would be an attempt to create a perpetuity, and is unlawful as being against public policy, and, therefore, the devise to James shall wholly fail, and John shall have the estate absolutely. This is one of the many refinements, which will never be comprehended by plain men, and which not one of ten practising lawyers does or will understand. Wills, therefore, will continue to be made in contravention of this rule, and controversies and lawsuits will arise for centuries to come, which might be prevented, if the law, relaxing a little from its vaunted inflexibility, would conform its rules to common sense, common apprehension, and the inevitable variations of language. We do not mean to imply by these statements any censure on English or American judges, for their obedience to authority; on the contrary, it was inevitable from the nature of the system. To judges of inferior tribunals any other course was plainly impossible. Our object is only to show, that the community is not under the same obligation with those, who hold judicial stations, to follow in the steps of their predecessors. Legal reformation is not within the province of the judge, but, believing reform to be expedient, we would urge, as one reason in its favor, the propriety of relieving

judges from the obligation now imposed upon them of obeying precedents not consonant to the spirit of the age. Their situation is one of peculiar difficulty, and often subjects them to the influence of conflicting inclinations, if not of opposing duties. In some circumstances, intellect is inevitably an insurgent, and there is a natural struggle of the mind against absurdity and wrong, which will influence juries and even judges to escape, when they have any tolerable pretext, from arbitrary rules which work injustice. The slightest variation of terms, without varying the sense, is permitted to alter the legal result. As in the case above supposed, if the expression be, that if John dies without *children*, or without leaving issue *behind him*, then the estate shall go to James; in these cases effect will be given to the devise, and James will get what the testator designed he should. But who does not see, that the intention of the testator was the same in both cases. These groundless distinctions are the necessary result of an erroneous rule, and the law books are full of cases to show, that there is no circumstance or variation of expression so slight, that such a distinction will not be sought to be founded upon it. In these cases no one will doubt, that a change in the law would increase its clearness and certainty, and indeed it is quite evident, that so long as the struggle between precedent and reason shall continue, legal opinions must be dubious to a perplexing degree, inasmuch as the result in any given case will depend more on the character and turn of mind of the judge, who is to decide it, than upon any general principle.

The binding authority of precedent is sometimes relied on as a safeguard to judicial integrity. It is of little value for such a purpose. Let us secure, without regard to party notions, the services of men of talent and reputation for judges, and those, together with independent stations, honorable support, and the watchfulness of an enlightened bar and public, are the only real securities for judicial integrity. Trust must be reposed somewhere; and if the bench be thus constituted, it will be the safest depository of power. If judges may be supposed to be in fact corrupt, the slender web of authority and precedent is wholly insufficient to restrain them. These, now so powerful, would burst at once before a man determined on his object. A specious pretext could never

be wanting. Scarcely any doctrine can be advanced, or decision made, to which an ingenious man cannot give the color of respectable authority. Ancient cases and precedents would be roused up, like so many sleeping lions, to destroy the innocent and unwary. A violation of truth, reason, and justice, would be as palpable and easily detected, and as surely repressed and defeated, as a violation of precedent and authority, when the records of the law present so many varying and contradictory opinions. If, for the honesty of our judges, we must trust to coercive authority, it surely on that account alone would be advisable to resort to a written code, where, if it provided for the given case, the only question would be, as to the construction of the code itself, and one authority could not be balanced against another.

When the law shall have become thoroughly conformed to the spirit of the age, authority will become of double value and efficacy. Decisions, which approve themselves to the reason and the conscience, have much greater weight, than those which oppose them. If the direct road be also the most beaten, there will be little temptation, and no apology, for turning into devious paths; but if the prescribed way be circuitous and illconstructed, there will always be apparent cause for striking into some other route.

All the states of this Union, which were British colonies, that is, all the original states, adopted the English common law, and the greater part of them, the English statute law in mass. This was natural and proper; indeed, under the circumstances of the case, it was inevitable. They knew no other system of law, and they could practice no other. It was intimately connected with all their habits and institutions, and it is not too much to say, that the moral impossibility of changing by an act of national volition, or legislation, the established jurisprudence of a people, is as certain as the physical impossibility of changing the great geographical features of the country they inhabit. All revolutions in matters, which affect the great mass of society, to be salutary, must be gradual. The reason is obvious; the question is not what is speculatively best, but what is known and approved, what is generally understood and can be put in practice. The habits and manners, the existing opinions, and the laws which are founded on these, cannot be changed by any power short of

despotism, and despotism itself has often failed in the attempt. Time is the only reformer. The expansion of a country, the increase of its wealth, its foreign and domestic intercourse, its new acquisitions moral and physical, the new relations into which it is thrown, and the changes consequent on these, all tend to produce a revolution in its jurisprudence, and nothing else can or ought to produce it.

Because changes should be gradual, it does not follow, that there should not be some periods in our progress, or *epochs*, when we should pause and look about us to ascertain what changes have been effected by the operation of time and new circumstances, and what further changes are clearly indicated as expedient by the course of things, and the new lights which have fallen upon us. In this way only can experience and 'the wisdom of our ancestors' be turned to good account. It is a truth that many will never learn, that mere *duration* is not experience, and that experience, to be of any value, must include observation and comparison at least, if not experiment.

We trust that nothing which has been said will be construed into an attack upon the common law. If we were compelled to make a selection among all existing, or known systems of jurisprudence, we should certainly decide in favor of the common law. Our chief reason for this preference would be, that it is the law of freedom. But being sovereign States we are not bound, nor is it wise to adopt, in mass, and without distinction, the jurisprudence of any country. The question rather is, whether these United States, or some of them, have not so increased in magnitude, whether their institutions, mode of society, tenure of property, and, in short, all their relations and their whole character, have not become so materially different from those existing in England, or rather from those which did exist there, when the foundations of the common law were laid, that the change and alienation, which have thus resulted, ought not to be formally recognised; whether we have not derived all the aid we ought to expect from the land of our ancestors; whether any farther servile dependence on a foreign country does not rather tend to retard than promote our advancement; and lastly, while we pay to England all due courtesy and respect, not only as the land of our fathers and the abode of our brethren, but also as the

freest, the wisest, and most illustrious European nation, whether we should not, nevertheless, declare a final separation, not a nonintercourse, but an independence in jurisprudence, as really and nominally absolute, as it has long been in point of political sovereignty?

We anticipate the inquiry, to what does all this discussion tend? It is useless to point out evils and imperfections, unless a remedy be suggested; and what remedy is proposed?

To this it might be sufficient to answer, that we are not bound to indicate any specific course to be adopted in preference to all others; that it is of great consequence to ascertain and point out the existence of the evil, to excite attention and stimulate inquiry; that the effect of examination and discussion must be enlargement of knowledge, and this can hardly fail to lead to practical results. There is no imperious necessity for any violent or hasty measures. The yoke is heavy, but not galling; our ancestors and ourselves have worn it so long, we have so adapted ourselves to it, that we are scarcely conscious of its weight. Above all, let nothing be done in a spirit of haste or impatience, from national vanity, or any wild theories of perfection. We are therefore well content to forego the glory of being ourselves reformers, and to leave to posterity the honor, which must at some time result from the performance of this great work, ever bearing in mind, that whenever a prejudice is destroyed, one obstacle is removed from the path of improvement, and whenever a just opinion has been canvassed and established, a post has been gained and fortified in the march of mind.

Farther than this we are not bound to go, and here we might close this article; but as in truth our inquiries have not stopped here, we have no reluctance to state the result to which our minds have arrived; and in so doing, no merit is claimed for originality; the proposed remedy is not a novelty in speculation or practice; it is obvious, and has been frequently recommended, and, as we believe, is the only remedy which can be applied with success. We would then suggest the propriety, that at least some of the larger and more wealthy states of the Union should cause their laws to pass under a general revision, and to be formed into *written codes.*

We shall briefly state in what manner we think a code ought to be formed, and shall then leave the suggestion to

make its own impressions on our readers, adding only a few remarks to prove its utility, and to remove objections.

In the first place, nothing should be done in times of political excitement. There should be no mixture of party spirit in this great work. Some of the states have incurred disgrace by the laws, which they have passed under the influence of faction, and still more deeply by the men that have, from a like cause, been appointed to judicial stations. But there is no reason why, in a propitious calm like the present, when there is nothing within or without to distract our attention, or to give an undue bias to our efforts, there is no reason why, at such a period, we should not subject our jurisprudence to a revision more extensive and elementary than it has hitherto undergone, and bring about a revision of the laws, which should include the unwritten or common law, as well as the statute law, which is now in many states frequently, and in some of them periodically revised.

The first apprehension which will strike some minds at such a proposition is, that everything will be thrown into confusion; that all the elements of jurisprudence would be confounded and remodeled; and whatever might be the theoretical beauty of the new structure to be created from the ruins, it would be wholly untried and experimental, 'unsafe to touch and insecure to stand on.' We have no such apprehensions, nor need any entertain them if they will but reflect who are to be the principal actors in this revolution. They would be chiefly lawyers, and common law lawyers, for we have scarcely any other; men whose minds had been cast in the moulds of Littleton, Coke, and Blackstone. They would also be grave and experienced men, for none but those who had attained a high station in the profession would be entrusted with such a task. The danger would, in truth, be the reverse of what is apprehended; the reformers being acquainted with the English common law, and none other, and all their habits, ideas, and associations being connected with it, the probability is, that their views would not be sufficiently large and liberal, and that they would be governed too much by the bias and prejudice of their education. Has not the fact been found to correspond with these suppositions? Have not our lawyers, and judges, and legislators ever shown a disposition to retain many parts of the English system, which

are alike incompatible with the present state of knowledge, and with our institutions? Our poor laws have been enacted in conformity to English notions. We have reenacted their usury laws. Their laws against the combinations of mechanics to obtain advanced wages from their employers are adopted in these democratic states. We have no time to pursue this branch of the subject farther. The preceding part of this essay has been written in vain, if it has not shown the prevalence of fixed ideas and principles in regard to all matters of jurisprudence, and that there is little danger of rash and unnecessary innovation in our laws. Indeed, a thorough bred lawyer *cannot* be a great innovator; his mind is saturated with the system, and he cannot wash out the tinct; his thoughts have all travelled in a certain round, and they cannot break out into space.

It is often urged, and with great sincerity, that the proposed remedy for the multiplicity and uncertainty of the law would be unavailing. It is said, and no doubt truly, that if a written code of the laws were prepared with the greatest care and ability, there would still be many lurking ambiguities; that new cases and new difficulties would arise; that comments would shortly be appended to the code; that these comments would themselves form the basis of fresh annotations; that different opinions would be entertained of the meaning of the code itself, and conflicting decisions made thereon, and thus in a short time there would grow up a mass of authority and adjudication, as ponderous and oppressive as that from which we now seek to be relieved; and, finally, that all expectations of reducing the law to a state of simplicity and certainty would prove fallacious. We admit that there is much truth in this. We have no expectation that the law ever can be reduced to a state of simplicity and certainty. On the contrary, it is in its own nature, and must ever remain, to a very great and inconvenient extent, complicated and uncertain. It is for that very reason, that it is all important to reduce the subject within as manageable a compass, and to as great a degree of certainty as possible. That there are trackless forests, and undiscovered regions, is no reason why the known and cultivated parts of the country should not be surveyed and reduced to orderly arrangement.

The multiplication of reports, emanating from the numerous collateral sources of jurisdiction, is becoming an evil alarming and impossible long to be borne. It has of late increased enormously in every mode of increase; the establishment of new tribunals; the increased habit of reporting; and the prolix method adopted by the reporters. All these reports are considered to be entitled to respect in a greater or less degree, and they come upon us from every quarter in an overwhelming flood, intermingled with digest, compends, and essays, without number. Such has been this increase, that very few of the profession can afford to purchase, and none can read all the books which it is thought desirable, if not necessary, to possess. By their number and variety they tend to weaken the authority of each other, and to perplex the judgment. No system ought to be adopted, which should prevent our searching for the lights of jurisprudence in every quarter whence a ray can be derived, but we surely may avoid something of the perplexity and confusion of false lights. If all the existing sources of information were explored, and a digested system of law extracted from them with great care and judgment, much might be accomplished, although many errors were suffered to remain. We should not have a perfect code; new cases would arise, that could be referred to no settled principle. But this merely shows the imperfection of all human things, and the infinite relations of human life; it does not show, that an immense mass of doubt and error would not be removed. We should avoid to a great degree the weighing and balancing of opposing decisions, and conflicting analogies. The code, so far as it professed to proceed, would be decisive. Many reason as if we could gain nothing, because we cannot settle everything. That new and difficult relations will present themselves, only renders it the more necessary, that those which are developed should be fully understood and reduced to method and certainty.

An example may perhaps assist our comprehension of the subject. Take the law titles Baron and Feme, (Husband and Wife,) or Bills of Exchange and Promissory Notes. Neither of these are among the most difficult or least understood titles of the law. Still the learning in relation to them is scattered through at least five hundred volumes, any *one* of which it might be important for a lawyer to consult in a

given case. It is true, and we admit, that all the possible relations of these subjects could not, by any human investigation or sagacity, be reduced into a code, but so far as they ever have been brought under judicial cognisance, or otherwise developed, they might be set forth plainly and at no great length. In so doing a mass of errors and contradictions would be authoritatively refuted, surplusage avoided, redundancies and repetitions retrenched, and the whole matter, as we verily believe, might be reduced in the proportion of one hundred to one, and this to the great improvement of the law as a science.

Mr Dane, an eminent lawyer of Massachusetts, is now publishing a Digest of American Law. This abridgment is to be contained in eight very large octavo volumes. Now if Mr Dane esteemed himself at liberty to state simply what the law is, or in his opinion ought to be, without amplification or argument, if he could omit the citation and discussion of *dicta* and authorities, whether contradictory or corroborative, and should thus reduce the law, as any other science would be reduced, to a series of propositions and statements intelligible to every professional student, if not to every enlightened man, and should present his digest in this form to the public, no one, who has turned his attention to the subject, will doubt, that the whole might be comprised in at least *one* volume of the same size. It would then much exceed in bulk the Napoleon Code. The maxim, *lege multum non multa*, is as applicable to the law as to any other subject, and such a volume, carefully perused and reperused, would convey more and better information than the reading of the whole eight, excellent as we doubt not they will be.

We are not to be understood as recommending the propriety of committing such a task to any one man, however eminent his talents and acquirements, or severe his industry. It is too mighty for a single intellect. Besides, an individual is apt to be governed by a single set or chain of ideas and associations, and such a work ought to undergo a careful and thorough revision, by those who will view it in different points of light. There are, no doubt, many men in our country who are fitted to earn glory for themselves, and to signalise the age, by the performance of such a labor. In a few years two or three such men, aided by the labors of a few eminent

common lawyers, would produce a code, which, after the first awkwardness resulting from novelty and change of habit had worn off, would be almost as real and as great an improvement in jurisprudence, as the introduction of steamboats in water transportation. Simplification, order, arrangement, labor saving contrivances, and increased efficiency of exertion are taking place in every other branch of human knowledge and effort; and it is not to be admitted, that the law, whose office it is to pervade and govern the whole, is exempt from the operation of a beneficent principle, which is otherwise universally prevalent. The main labor would be to retrench and simplify, and to declare authoritatively, that which is now involved in doubt and discussion from the contrariety of opinions and decisions to be found in the books.

When such a code shall have been well considered, digested, and matured, it must of course be submitted to the state legislature for its final adoption. It would then undergo another scrutiny, and the practical good sense of those who compose that body would act upon it. They would not lightly interfere with a system, which had been thus prepared and elaborated; but they would of course reject whatever they might deem manifestly injurious. This would be an additional guard, of which other nations have not had the benefit in the formation of their codes, at least not to the same extent. A code of laws, thus prepared and adopted, would, no doubt, still be imperfect; but if it were not less so than the present system, (if that can be called a *system*, which is the confused product of different ages, and countries, and states of society, dark, uncertain, often contradictory, and almost without method,) if it were not preferable to such a system, the result of the experiment would be to show, that confusion may be better than order, and that on the great subject of the regulation of human rights and actions, it is better to trust to chance than to intellect.

But ought we to be considered as contending for experimental projects against experience? On the contrary, has not experience settled this point in favor of our argument? It matters not that the experience is not our own. It is the distinguishing character of wisdom to profit by the experience of others. The Roman law was not drawn from more various sources than our own, and it probably was not more

confused and discordant, yet the digests and revisions, which it underwent at successive periods, were not only of great immediate utility at the time when they were made, but have conferred immortal honor upon the enlightened princes under whose auspices they were compiled, and upon the illustrious jurists, who were employed for that purpose; and when the empire which produced them, with all its power, learning, arts, and institutions, had crumbled into dust, and clouds and obscurity had gathered thick upon it, and the destruction was nearly elementary, these monuments survived the wreck of almost everything else, and were rediscovered and brought forth in happier times to serve as the basis, and in truth, nearly for the whole structure of the jurisprudence of the new governments, which were formed from the ruins of the Empire. If we suppose a similar misfortune to happen to England or America, what book, treatise, or set of books is there now existing, which, if discovered in future times, would convey to posterity an adequate knowledge of our legal system? If a complete law library, buried this day, were disinterred at the distance of a thousand years, it would not answer that object. The arbitrary refinements and distinctions of the common law would have passed away from the human mind, and could hardly be revived. The language would have become obsolete. If any one doubts this, let him inquire whether an ordinary record of a court of Westminster Hall, as for instance, in an action of trover or trespass, being sent to any country on the continent of Europe, and translated into the language of that country, would convey clear and sufficient information either of the matter in controversy, or of the ground on which it was decided. Those, who have had an opportunity to examine the records of continental courts, must acknowledge, that in this respect, at least, they are very much superior to the English.

While on this subject, we cannot omit, in confirmation of our argument, to call the attention of our readers to the Napoleon Code. It was made after a great revolution, and by the command of a despot. Still, it is conceded by all to have been an immense improvement. It was, as every code must necessarily be, little more than a compend of laws and principles previously existing, but then it introduced order and certainty, and compressed the law within a comparative-

ly small compass. It did not fix and settle the law forever; no code could do that. On the contrary it became the basis of essays, comments, and annotations; but is it not better that they should have such a basis, than that they should, as in England, be founded on a thousand volumes of ancient and modern statutes, essays, digests, reports, and decisions of greater or less authority, more or less obsolete, and proceeding from judges of all degrees of power and reputation, from the Lord Chancellor delivering an elaborate opinion in his own court or the House of Lords, to a puisne judge or commissioner at Nisi Prius? Prejudice and bigotry cannot deny, and do not deny, that the Napoleon Code is a decisive instance of the success of the principle for which we contend. *Fas est ab hoste doceri.*

We are not wholly without the benefit of experience in this country in relation to this subject. We have already hinted at the division of the law into two heads, namely, that which binds by force of a statute or the will of the legislature, and that which is derived from all other sources. This distinction is not very precise, because much of the law consists in authoritative decisions on statutes, which are often very distinguishable from the statutes themselves, but it is sufficiently accurate for our present purpose. Now we believe that the experience of most of the states has shown the expediency, not to say the necessity, of an occasional revision of the statutes to a greater or less extent. Statutes, *in pari materia*, as they are called, that is, upon the same subject, have been revised, collated, amended, and reduced into one. Saving the offensiveness of the term, this is nothing else than legislative *codification*. It has been found not dangerous but beneficial, and we cannot but think, that if an English jurist would take a hint from a young country, he would not be long in discovering that it would be no small service to his own kingdom, if the numerous volumes of her statutes had been reduced into order and compass; if the game laws, the laws relating to apprentices and the poor, the bankrupt laws, and, above all, the criminal laws, had been revised and brought within the limits of memory and investigation.

The statute law is quite inconsiderable in comparison with the enormous mass of the common or unwritten law, that law of which the evidence is to be found in books of reports of

the English and American courts, and the books made from them, with an occasional though rare reference to the opinions and decisions of the jurists of other countries. If then the benefit of digesting the statute laws into something resembling a code has been so great and so apparent, what reason is there why a similar advantage may not be expected, by subjecting the larger and more discordant mass of the common law to a similar operation?

But there are still higher and more illustrious precedents to be adduced in support of our argument. We allude to the constitutions of the several states of this Union, and to the federal constitution which holds them all together. What are these but a digest or *code* of fundamental principles on constitutional law? They have not excluded doubt or discussion; no human instrument could do that; language is not competent to such an effect. But they have done much; and infinitely more than those will readily believe, whose thoughts and studies have not led them to be conversant with subjects of this nature. We have had many constitutional discussions; in the infancy of this system, before its organisation had become perfect, and its parts were adapted to each other, this was unavoidable; but our written constitutions have furnished a comparatively easy and definitive test, for the resolution of doubts and decision of controversies. In England also there have been constitutional disputes, and the disputants have appealed to theoretic reasoning, vague maxims, obsolete charters, ancient usages, half forgotten statutes, concerning which it has been matter of doubtful discussion, whether they were or were not in force, and finally, there being no other absolute test, to the sword of the strongest.

The administration of justice is beyond all comparison the most important part of the government and polity of a country. An enlightened jurisprudence supposes a great advance in national character, and, more than anything else, tends to aid its further progress. That the judiciary is honest and learned denotes only a low degree of improvement in this most important of all arts. The laws should be as simple as is consistent with the multiplied relations of society, they should be homogeneous, and adapted to the existing state of things, they should be intelligible, that they may be understood, and just, that they may be approved, and they should be carried

into execution in a direct, economical, expeditious, and effectual method. How far the English system of the law remains distant, not only from theoretical, but easily attainable perfection, any one may perceive, who has studied this subject with any degree of philosophical attention. Americans will not long believe, and the inhabitants of many of these states do not now believe, that there is any necessity that the forms of conducting a legal controversy should be so multiplied and expensive, that the mere costs of suit, without taking into consideration the rewards of professional eminence, should be so great, that none but the rich can indulge in the luxury of the law. This is now the case in England. Enlightened men will not long believe, that it is necessary to have such a system of law, that a vast proportion of the reports relate to distinctions having no connexion with the justice of the case in controversy, and but a doubtful existence in the nature of things, such for instance as the evanescent and scarcely discernible boundaries of the actions of trespass, and trespass on the case. These things will not always remain as they now are, but the day of change is perhaps far distant.

ART. IX.—*Die Staats Wissenchaft, theoretisch und praktisch dargestellt, &c.*

The Science of Political Economy, theoretically and practically explained and illustrated, by Examples out of the modern financial History of European States. By LEWIS HENRY VON JAKOB. 8vo. 2 vols. in one. Halle. 1821.

THE author of this valuable work is one of the many German scholars, whose merits have been latterly acknowledged by the cheap reward of nobility. This might be understood from the particle *Von* prefixed to his name, which, although very ancient and truly historical, is not one of those feudal epithets indicating an aristocratic origin. What honorable station the ennobled author fills, the titlepage does not designate, but from the book it appears that he is a professor in the University of Halle, is respected in Germany as a writer and translator of various works on political economy, and has arrived to the advanced age of seventy years or more. His style